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IN THE

Supreme Court of the United States

October Term 1972

No. 1428

Jesse Alexander Eller, *et al.*, *Intervenors*
Petitioners

v.

Sylvester J. Vaughns, Jr., *et al.*,
Respondents

v.

Board of Education of Prince George's County, *et al.*,
Respondents

PETITIONER'S REPLY BRIEF TO RESPONDENTS VAUGHNS, ET AL., AND SUPPLEMENTAL BRIEF OF PETITIONERS ELLER, ET AL.

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July 12, 1973

BEACON PRINTING - 293-7160 - Washington, D.C. 20036

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CASES:

Brown v. Board of Education (Brown I), 374 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954) 6, 7, 8, 10, 14, 16, 17

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Green v. County School Board of New Kent County, Virginia, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968) 13, 14, 16

Keyes v. School District No. 1, Denver, Colorado, et al., ___ U.S. ___ (Slip Opinion No. 71-507, June 21, 1973) 2, 5, 11, 12, 14, 16, 17

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971) 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, 17

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I. INTRODUCTION

Jesse Alexander Eller, et al., on behalf of themselves, school age children, and other citizens of Prince George's County, Maryland, similarly situated, hereby, through their attorneys of record, submit this brief for consideration by the Court in accordance with Rule 24 of this Court.

This brief is submitted to correct misstatements and error included in the Brief For Respondents in Opposition submitted by Respondents Vaughns, et al. In addition Petitioners Eller, et al., wish to supplement their Petition For Writ of Certiorari dated April 20, 1973 through an analysis of the June 21, 1973 decision of this Court in *Keyes, et al. v. School District No. 1, Denver, Colorado, et al.*, ___ U.S. ___ (Slip Opinion No. 71-507, June 21, 1973).

Respondents Vaughns, et al., have chosen to limit their opposition to two issues:

1. The dual school system defined by *racial ratios.*
2. *De Facto* v. *De Jure* Segregation.

The Respondents Board of Education of Prince George's County, et al., have chosen not to file a brief in support of or in opposition to the Eller's Petition for Writ of Certiorari.

The following page references are used:

Petitioners Eller, et al.,
Petition for Writ of Certiorari,
dated April 20, 1973 . . . . . .(PWC 1-41)

Appendix to Petition for Certiorari . . . . . .(1a-109a)

Brief in Opposition of
Respondents Vaughns, et al. . . . . (BO 1-18)

Joint Appendix on Appeal filed
in the United States Court of
Appeals for the Fourth Circuit . . . . . .(JA 1a-337a)

II. CORRECTION OF RESPONDENT'S ERRORS

A. Petitioners had timely objected–

Petitioners Eller, et al., had timely objected to the U.S. District Court proceedings below. Respondents Vaughns, et al., have stated,

---

Errata - At PWC 13, please change the page reference number in Line 12 from (at 20) to (at 25).

> "On the basis of facts stipulated by plaintiffs and defendants and *not questioned by intervenors,* defendants never operated a unitary school system." (emphasis ours) (BO 6).

Petitioner intervenors were denied the right under due process of law to question the stipulated facts and this is the main thrust of the petitioners' argument. (PWC 11). There was much more required by the lower Court in obtaining evidentiary matter that the Court refused to take the time to hear. How then can Vaughns state that no substantial federal question is presented when they themselves hide behind the lower court's order on intervention of September 19, 1972, and infer to this Court that your petitioners slumbered on their rights when they did not. This is a direct attempt by the respondents to mislead and to misinform this Court.

B. Misstatement of facts by Respondents Vaughns, et al.–

Respondents Vaughns, et al., continue to mislead the Court, by misstating the facts in the instant case.

> "The continued operation of the school district as a dual system was more than a reflection of a mere failure to take affirmative action to convert to a unitary system. During the 1954-1972 period, the district utilized its construction program, its boundary setting power and its teacher assignment policies to maintain racially identifiable schools" (BO 7).

Nothing is further from the truth. Limited evidence was submitted in the stipulation of facts and no evidence is before the lower court in any capacity that refers to school construction being based upon a segregated policy by the school board. The court below would not permit, *inter alia,* the introduction into evidence during evidentiary hearings on the following:

a. School Construction Programs.

b. Boundary Setting Power of the School Board.

c. Teacher Assignment Policy.

The Stipulation of Facts (JA 111a-254a) agreed to by the Respondents Vaughns, et al., and the Respondents Board of

Education, et al., were never agreed to by the intervenors. Further this information was lacking on the method and basis of the school board's policy and plans regarding desegregation of the Prince George's County School System.

This Court should not be misled by erroneous statements. Where false statements are made by the respondents in their brief the entire record should be expunged as to their references out of context. Wherever Respondents Vaughns, et al., refer to J.A. 155a-183a, as providing the statistical basis, such are not the facts. For example, on school boundaries (JA 200a-215a), there is not one statistic or statement that any boundary change occurred because of a dual school system policy by the school board. There is no charge made by the Respondents Vaughns, et al., that the school board followed a policy of gerrymandering, which they did not. Further the report on school facilities (JA 184a-198a) is equally devoid of any reference to the school board's policies. In addition selection and purchase of school sites involved the joint cooperation of all of the following *ten* (10) governmental offices:

a. Maryland-National Capital Park & Planning Commission

b. Washington Suburban Sanitary Commission

c. Prince George's County Department of Public Works

d. Maryland State Board of Education

e. Maryland State Soil Conservation Service

f. Maryland State Highway Administration

g. Maryland State Planning Department

h. State of Maryland School Inter-Departmental Construction Agency

i. County Council of Prince George's County

j. County Executive of Prince George's County

These offices are discussed in the Joint Stipulation of Facts (JA 134a-137a).

The fact that the lower court in the instant case failed to accept the role and decision-making power of these ten (10) offices over and above the Prince George's County Board of Education was error in and by itself and in direct violation of the holdings in *Swann v. Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), in which Mr. Chief Justice Burger stated,

> "The elimination of racial discrimination in public schools is a large task and one that should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. *** * We do not reach in this case the question whether a showing that school segregation is a consequence of other types of state action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action by a school desegregation decree. *This case does not present that question and we therefore do not decide it.* (emphasis ours). 402 U.S. 22, 23, 91 S.Ct. 1279.

None of the ten offices listed above was made party defendants in the case. None of the ten offices was brought into court for evidentiary hearings to determine whether or not the school board was acting independently in a racially segregated policy. These arguments are for the briefs on the merits, but the point that your petitioners is making is that *Swann* distinguished the instant case from its holding and therefore in accordance with this Court's holding in *Keyes v. School District No. 1, Denver, Colorado, et al.,* ___ U.S. ___ (Slip Opinion, No. 71-507, June 21, 1973,) discussed infra, pages 11-17, *Swann* and *Keyes* dramatically show the miscarriage of justice in the lower court rendering its erroneous decision that the Prince George's County School Board was guilty of operating a dual school system. (64a).

C. Petitioners did not overlook limitations of intervention consent order–

It is inferred that paragraph 6 in the Court Order granting Eller's Motion to Intervene (74a) was overlooked by your petitioners (BO 14). This is not true for your petitioners specifically

cited paragraph 6 (PWC 19) and stated why petitioners had not waived their rights. Petitioners have stated that the aforesaid paragraph 6 was a self-serving statement by the Court below (PWC 18). It is now further alleged by your petitioners that the Court below placed intervenors under duress on the basis that if the intervenors would not accept such conditions as paragraph 6, that said intervenors would not be added as class-action parties to the instant suit. This is verified by Respondents Vaughns, et al., "Statement of the Case" (BO 4, paragraph 2, sentence 2) that intervenors participated *in a limited way* and "on condition, *inter alia*, that they were satisfied with their limited rights****" (BO 4, paragraph 3). And there was even more of this due process violation,

> " **** ,the intervenors shall not seek to present to this Court any evidence, testimonial or documentary, other than that which was presented to this Court by joint stipulation of the parties prior to July 25, 1972 and made a matter of record herein, relating to the issue of compliance or non-compliance with the standards of *Brown I, Brown II,* and *Swann,* ****" (73a).

THIS IS THE DUE PROCESS VIOLATION ISSUE PRIMARILY ARGUED BY YOUR PETITIONERS BEFORE THIS COURT, and for which your petitioners wish to argue in the briefs on the merits and orally.

D. Intervenors had objected to Plan I–

Respondents Vaughns state that the intervenors did not object to the school board's approach, which was Plan I (BO 10). Yet they do not cite any reference to the record in which such waiver by the intervenors occurred. On the true side of the record the intervenors did object, but found that they were already limited by the lower court's restriction on participation as found in paragraph 2 of the intervention consent order, which states,

> "Further, the intervenors agree they will interpose no objection to evidence being presented in any form or by any procedure agreed to by counsel for plaintiffs and defendants and approved by this Court." (72a).

Also Plan I was based upon the Court's edict of *racial-ratios* as enunciated in *Swann*, and as stated above by the Court, the standards of *Brown I, Brown II* and *Swann* were to be adhered to.

The statement made by the Respondents Vaughns that the intervenors did not object is totally absurd! During the December 4, 1972 hearing, the Honorable Judge Kaufman stated,

> "Actually as you gentlemen all know, this hearing today was scheduled to try to take care of certain preliminaries, it was never contemplated that we were going into details of the plans today within a few minutes after submission. As a matter of fact, all counsel asked for time to confer, and you wanted, if you'll remember, about ten days, and we worked out a hearing schedule pursuant to which hearings on the details of the plans themselves would start on December 13, * * *" (Transcript 12-4-72, page 8).

And then on December 13, 1972, Judge Kaufman stated,

> "I want to do that (taking testimony) especially in view of the fact that there has been every indication given to me by Mr. Nussbaum (attorney for the school board) and Mr. Nanna (attorney for intervenors) that one or both of the Defendants and/or the Intervenors would be taking an appeal from almost any Order of this Court." (Transcript 12-13-72, page 4).

And then on December 26, 1972 the following occurred during the hearing:

> Mr. NANNA (Intervenors): First, Your Honor, I want to thank you for the opportunity you extended to me to participate in the discussion in Chambers where the staff plan was reviewed by the Court and by all counsel in this case. *We do not endorse the final staff plan* as being educationally sound, and *we adopt the view taken by the Board* in that matter, and we also—*We do not agree, and we have made our position fairly clear throughout this proceeding,* that the

> implementation—that we do *not* agree that the implementation of the plan is necessary to bring the Prince George's County school system into compliance with the standards set out in *Brown* and *Swann*. (Transcript 12-26-72, page 18). (emphasis ours).

What clearer record is there that the intervenors, your Petitioners Eller, et al., objected to the proceedings and to the plan submitted by the attorney for the Prince George's County School Board.

E. Respondents misstate references to the record below—

Respondents Vaughns, et al., state statistics regarding schools unchanged (BO 16), but nowhere on JA 235a is a single percentage used or a number of schools identified. Their J.A. page citations are in error and it is not possible to determine just where the Respondents obtained their figures, such as "eight (schools) remained virtually black on the day suit was filed (JA 156a)" (BO 16). Such statements are not supported by the stipulated facts in the record. Respondents Vaughns, et al., made the same error in citing appendix pages in their brief in the instant case to the Fourth Circuit Court of Appeals filed January 9, 1973 and found therein at pages 31 and 32.

III. THE SCHOOL SYSTEM DID FUNCTION UNDER A DESEGREGATION POLICY AND PLAN IN 1969

If by stating that "there was no dismantling of the segregated system in 1969" (BO 17), the Respondents mean that the Prince George's County School District had not made a "radical" change in its overall desegregation policy, then this is undoubtedly correct, for in 1969 the policy of the school board was continuing desegregation without requiring "shock treatment" to the citizens of the County. Continuing desegregation was required because the influx of blacks from the District of Columbia was and is always increasing in the area surrounding the District of Columbia, requiring for example the model cities program funded by Congress.

The question of whether or not the medicine for the cure is correct, notwithstanding that the patient dies is one of the issues before this Court. Perhaps lawyers and judges should

follow the creed of medical doctors–the hippocratic oath, which in modern form says that if a doctor can do no good, he should do no harm.

The judiciary through the orders and opinions of the United States District Court for the District of Maryland has seriously hurt and injured the majority of citizens in the County and will continue to do so through extensive unnecessary busing with the concomitant elimination of the community concepts of families, churches, small businesses and schools. Respondents Vaughns, et al., have contributed substantially to this sickness causing the harm and injury, this sickness of immediate change in the school system which now prevails throughout the Prince George's County School System. The results of improper judicial holdings and misinterpretation of *Swann* by Judge Kaufman in violation of due process of laws are the harm and injury and sickness, as felt by the innocents and the non-participants in school desegregation issues. Anglo-Americans are now speaking out and it is proper for this Court to timely hear and determine.

IV. ARGUMENT

A. *Racial-Ratios–*

> "The Court specified no criteria to be used in designing the plan." (BO 9).

The United States District Court in its opinion dated July 25, 1972 (65a) specified that the criteria for desegregation of the Prince George's County School System shall be based upon *BLACK-WHITE* pupil ratios and *no* other considerations. (*Swann*). This is contrary to and refutes the statement above of Respondents Vaughns, et al.

Referring to Judge Kaufman's Opinion, this Court will find beginning at the bottom of P. 66a and continuing to the top of P. 68a, that facts are stated by the court below and are limited solely to dates and numbers of pupils and numerical ratios of *blacks* and *whites.* Judge Kaufman states,

> "* * * defendants oppose plaintiff's motion for summary judgment, asserting that the undisputed facts constitute 'mere conclusions' **** But that

> dispute, * * *, is relevant not as to whether relief should be granted but rather as to what type of relief is required." (68a).
>
> "Those standards (*Swann*) command a discontinuation of the current lack of desegregation in the schools of Prince George's County. That lack stems from a pre-*Brown I* segregated system which has never been effectively dismantled ****" (69a).

If the Court wanted to use more explicit language it certainly could have, but chose not to, but to leave the basis for its decision as nebulous and vague as possible. Nonetheless, what other language could the Court below have used except to say that the Court finds the Prince George's School System's lack of desegregation is based upon *black-white* pupil ratios and for no other reasons, because if the Court did believe that other factors were at issue, it was silent in its pronouncements. Moreover, its order dated July 25, 1972 (64a) was a partial summary judgment order without explanation or factual foundation, as incredible as this may sound, notwithstanding the reference in its order to its opinion filed on the same date.

Respondents Vaughns, et al., concede this by stating that Plan I was based on the goal of reducing to 35% the black population of schools currently majority black and required the transfer of 84,000 students (BO 10). Noteworthy is that Respondents also state that the intervenors did not object to this approach (BO 10), but counsel for the intervenors already had his hands tied by the court below. They could not participate in arguing *racial-ratios* as issues because this was previously determined by the Court prior to September 19, 1972, which was the date of the consent order permitting intervention by your Petitioners, Eller, et al. (72a). See discussion at page 6, *supra*, and Reason II for granting the Writ (PWC 26-33).

Your Petitioners reaffirm their statements made in their April 20, 1973 Petition for Writ of Certiorari to this Court that *racial-ratios* were the sole basis for Judge Kaufman's issuing the partial summary judgment declaring that Prince George's County Schools were segregated on July 25, 1972 (PWC 27). The *Federal Question 2 Presented* (PWC 4) by your Petitioners is a valid question and definitely requires review by this Court.

Respondents Vaughns, et al., refer to the adoption of the Staff Plan as the work product of experts (BO 11). But this was based upon the standard of *racial-ratios* imposed under court order by Judge Kaufman. Vaughns cannot now properly argue that such a plan is valid when the Plan was worked up based upon an unconstitutionally determined standard forced upon the school board by the federal district court.

The lower court misinterpreted *Swann* on using *racial -ratios* of pupils as the only criteria for desegregation and ignored Mr. Chief Justice Burger's words,

> "Awareness of the racial composition of the whole school system is likely to be a useful starting point in shaping a remedy to correct past constitutional violations. In sum, the very limited use made of mathematical ratios was within the equitable remedial discretion of the District Court." 402 U.S. 25, 91 S.Ct. 1280.

This Court held in *Swann* that mathematical ratios were in limited use in determining desegregation in Charlotte-Mecklenburg, but Judge Kaufman in Prince George's County used mathematical ratios not only to the maximum, but also as the *only* criteria.

B. *De Facto - De Jure* Segregation–

Respondents Vaughns refer to the Fourth Circuit decisions on *de facto* and *de jure* segregation, but cite no case or legal argument in support of their contentions (BO 17). There is no support for their premise.

Petitioners Eller, et al., wish to supplement their original petition by drawing to the Court's attention the June 21, 1973 decision in *Keyes,* referred to at page 5, *supra.* This is in addition to petitioner's argument on *Keyes* in its petition for certiorari, which was not based upon this Court's recent decision (PWC 35-36).

Mr. Justice Brennan, speaking for the majority in *Keyes* stated the correct legal standard in dealing with the determination of a school board's policy for segregation to be:

(a) Proof that the school authorities have pursued an intentional segregation policy in a substantial portion of the school district will support a finding by the trial court of the existence of a dual system. (Brennan at 10).

(b) Proof that the school authorities pursued a deliberately segregated policy respecting certain schools of the school district does not necessarily constitute the whole county school system to be a dual school system. (Brennan at 13-14).

(c) Where a policy of intentional segregation has been proved with respect to a significant portion of the school system, the burden is on the school authorities to prove that their actions as to other segregated schools in the system were not motivated by a segregated intent. (Brennan at 18-19).

It is specifically this holding in *Keyes,* to which your petitioners have been directing their argument on due process of law in Judge Kaufman's Court. Under the *Keyes Doctrine, racial-ratios* are only one of the indices to determine a segregated school board policy. In addition it must be shown and proven by facts introduced into evidence that the school board pursued intentional segregation policy and that the said board must have been motivated by a segregation intent. No evidence of this nature was introduced before Judge Kaufman and its partial summary judgment order excluded any effort on the part of the school board or the intervenors to introduce such evidence. This evidence was to establish the facts on the record to determine *de facto* versus *de jure* segregation and to what schools such did apply, if indeed application was germane.

Mr. Justice Brennan in speaking for the Court in *Keyes* said,

> "What is or is not a segregated school will necessarily depend on the facts of each particular case. In addition to the racial and ethnic composition of a school's student body, other factors such as the racial and ethnic composition of faculty and staff and the community and administration attitudes toward the school must be taken into consideration. (Brennan at 6).

In the instant case the lower court in its opinion dated December 13, 1972 cited *Swann* and even quoted Mr. Chief Justice Burger's words on racial balancing and mixing (41a), but failed to take into account the remainder of the holding in *Swann* which was that school faculty, facilities, etc., are part of the determination of whether or not a school system is a dual system, and what is required to continue desegregation. For in *Swann,* this Court held,

> "We turn now to the problem of defining with more particularity the responsibilities of school authorities in desegregating a state-enforced dual school system in light of the Equal Protection Clause. Although the several related cases before us are primarily concerned with problems of student assignment, it may be helpful to begin with a brief discussion of other aspects of the process.
>
> "In *Green*[1] we pointed out that existing policy and practice with regard to faculty, staff, transportation, extracurricular activities, and facilities were among the most important indicia of a segregated system. Independent of student assignment, where it is possible to identify a "white school" or a "Negro school" simply by reference to the racial composition of teachers and staff, the quality of school buildings and equipment, or the organization of sports activities, a *prima facie* case of violation of substantive constitutional rights under the Equal Protection Clause is shown." 402 U.S. 18, 91 S.Ct. 1277.

This holding was available to the court below before issuing its partial summary judgment order (64a), but was ignored. Even if Judge Kaufman had held that the stipulated facts (JA 1a-337a) were sufficient to establish a *prima facie* case, this would have merely shifted the burden of proof to the school board to prove *on the record,* that such was not the case and that a segregated policy by the school board was not then in effect. This the lower Court failed to do and again is one of the due process violations for which your petitioners are arguing before this Court.

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[1] *Green v. County School Board of New Kent County, Virginia.* 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716.

Mr. Justice Powell in his concurring and in part dissenting opinion in *Keyes* stated that *de facto* versus *de jure* distinction was undercut in the evaluation of constitutional doctrine from *Brown I* to *Green/Swann.* (Powell at 6-7).

Even though Mr. Justice Powell takes issue with the opinion written by Mr. Justice Brennan on *de facto* and *de jure* distinctions, an analysis of both of the holdings and the Justices' legal arguments render the same legal conclusions in the instant case. Such legal conclusions are that the lower court in the instant case did not make a proper determination that the Prince George's County School System was in fact segregated. Petitioners Eller, et al., maintain that the school system was not such to have caused Judge Kaufman to have issued his massive busing orders. The lower Court's action was clearly unconstitutional. And *Keyes* supports this premise.

Mr. Justice Powell in his definitions has unknowingly defined the Prince George's County School System. For assuming without deciding that one should dismiss *de facto* and *de jure* considerations, *arguendo,* within Justice Powell's legal rationale, then the school board would be held to the standard–

> "that where segregated public schools exist within a school district to a substantial degree, there is a prima facie case that the duly constituted public authorities* * * are sufficiently responsible to impose upon them a nationally applicable burden to demonstrate they nevertheless are operating a genuinely integrated school system." (Powell at 8-9).

The lower court did not permit in the instant case, the introduction of the type of evidence that Mr. Justice Powell is referencing. Lack of adequate authoritative evidentiary hearings and unrecorded in-chambers conference destroyed what should have been a proper record (PWC 10-11). The lower court knowingly did this, and this Court should review all of this on the record and briefs on the merits with associated oral arguments by all parties. *Cannot Anglo-Americans be heard in this Court on the issue of education for their children?*

Let us follow Mr. Justice Powell's constitutional standards for an integrated school system as enunciated in *Keyes*:

> "A system would be integrated in accord with constitutional standards if the responsible authorities had taken appropriate steps to:
>
> (i) integrate faculties and administration;
>
> (ii) scrupulously assure equality of facilities, instruction and curricula opportunities throughout the district;
>
> (iii) utilize their authority to draw attendance zones to promote integration; and
>
> (iv) locate new schools, close old ones, and determine the size and grade categories with this same objective in mind;
>
> (v) where school authorities decide to undertake the transportation of students, this also must be with integrative opportunities in mind. (Powell at 10-11).

And as Justice Powell says, "A school which happens to be all or predominantly white or all or predominantly black is not a 'segregated' school in an unconstitutional sense if the system itself is a genuinely integrated one." (Powell at 11).

Intervenors maintain that the Prince George's County School Board had met all these requirements in deference to Judge Kaufman's conclusions of July 25, 1972, and petitioners wish to prove this before this Court after the granting of certiorari.

Even Judge Kaufman recognized that changing patterns of life affect pupil assignment in the schools when he stated

> "* * *, this Court recognizes that the increased and continuing movement of blacks in recent years from the District of Columbia into Prince George's County has produced a growing and changing societal pattern in the latter jurisdiction." (69a; July 25, 1972 Opinion)

Yet the lower court would not accept evidence on the effect of this changing pattern to the influence of the school board's decision in handling the overall desegregation policy.

In *Keyes*, Mr. Justice Powell states,

> "The controlling case is *Swann* **** *Swann* purported to enunciate no new principles, relying heavily on *Brown I* and *II* and on *Green*. Yet it affirmed a district court order which had relied heavily on 'racial ratios' * * * * Lower federal courts have often read *Swann* as requiring far-reaching transportation decrees 'to achieve the greatest possible degree of actual desegregation'." 402 U.S. at 26. (Powell at 21-22).

Judge Kaufman interpreted *Swann* in this same fearful context as Mr. Justice Powell stated in *Keyes*. The lower court used the heavy hand and brought chaos into the Prince George's County School System by the *racial-ratios* interpretation of *Swann*. Judge Kaufman wrote in his opinion of July 25, 1972 "* * * so as to bring the Prince George's County School System into total compliance with the *Brown-Swann* standards to the fullest extent possible * * * *" (71a). And also Judge Kaufman stated in his opinion of December 13, 1972, "*Swann* is written in detailed and easily understandable language." (40a). Nonetheless, Judge Kaufman did exactly what Mr. Justice Powell was most concerned about. "To the extent that *Swann* may be brought to require large-scale or long-distance transportation of students in our metropolitan school districts, I record my profound misgivings. Nothing in our Constitution, commands or encourages any such court compelled disruption of public education." (*Keyes*, Powell at 22). If this Court will but listen to the words of Mr. Justice Powell, this misinterpretation of *Swann*, could be stopped by the instant case, instead of having federal district courts destroy public educational systems which have taken so many years to create.

This destructive court policy has set back the entire Prince George's County school system an average of three years in education of those attending pupils. Such facts are not in evidence before this Court, are well known to the citizens of the school district and should have been one of the criteria required by any court before issuing desegration plans. *But* in Judge Kaufman's Court it was not possible to place such information into evidence. The intervenors wanted to produce the facts but

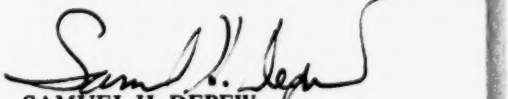
the lower court would not permit this. Instead the lower court required that a plan be implemented *now* (69a).

Judge Kaufman has limited his holdings of segregated schools in Prince George's County to *Brown I, II* and *Swann* (64a). Should this not be overturned based upon the legal logic espoused by Mr. Justice Powell in *Keyes*?

V. CONCLUSION

For the reasons set out in this Reply Brief to Respondents Vaughns, et al., and the Supplemental Brief of your petitioners, and also the petition for writ of certiorari, this Court should grant the writ of certiorari and set the case down for briefing and argument on the merits.

Respectfully submitted,



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